

## EXHIBIT 4

Scully, Thomas A.

May 15, 2007

Washington, DC

Page 1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

- - - - -x

IN RE: PHARMACEUTICAL : MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

PRICE LITIGATION : 01-CV-12257-PBS

THIS DOCUMENT RELATES TO :

U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris

the Florida Keys, Inc. :

v. :

Abbott Laboratories, Inc., : Chief Magistrate

No. 06-CV-11337-PBS : Judge Marianne B.

- - - - -x Bowler

1 then. I guess it was probably -- I can't remember  
2 who was in power, but Senator Grassley or Baucus, one  
3 of those, which committee.

4 But you know, most of the committee staff  
5 and the relevant committees, I had known for years  
6 and the members and the ranking members and chairmen.

7 Q. And that would be, that would include the  
8 Ways and Means Committee?

9 A. Yes.

10 Q. And the Senate Finance Committee?

11 A. Senate Finance, and Commerce.

12 Q. Commerce.

13 A. Commerce.

14 Q. And these are the folks that you would  
15 have had periodic contact with throughout your tenure  
16 as president and CEO of FAH?

17 A. Yes. And all through the first Bush  
18 Administration, generally people I had known for  
19 years. All through the first Bush Administration.

20 Q. And you stayed with FAH until 2001, is  
21 that correct?

22 A. Yep.

Scully, Thomas A.

May 15, 2007

Washington, DC

Page 49

1 Q. And then you were appointed --

2 A. Start from scratch, we are in trouble.

3 Q. And then you were appointed to be the  
4 administrator of HCFA, is that correct?

5 A. I think I was probably nominated in  
6 February-March. I think I was confirmed roughly in  
7 May, but I took -- basically became a consultant with  
8 HCFA, I think in probably early 2001. Until I was  
9 confirmed.

10 Q. All right. So you were nominated, and  
11 prior -- I just want to understand that -- prior to  
12 being confirmed, you worked as a consultant?

13 A. Prior to being confirmed, I worked as a  
14 consultant.

15 Q. So beginning in February or March?

16 A. Yes.

17 Q. And we are talking 2001?

18 A. 2001.

19 Q. And insofar as you know, how is it that  
20 you came to be nominated for this position?

21 A. God knows. I think I had a long  
22 relationship with first, obviously the first Bush

1 Administration. And not planning to go back into the  
2 government, but I ran into Secretary Thompson or  
3 something, and a mutual friend had recommended that  
4 he encourage me to do this. So it was largely  
5 through Secretary Thompson. And since I had a long  
6 history with the Bush Administration, hopefully I was  
7 an acceptable choice to the White House.

8 Q. And you stayed there until -- you stayed  
9 as administrator of HCFA and CMS, which was one of  
10 the first things you did was to change the name,  
11 until what, the end of --

12 A. Technically, it was January 4th of 2004,  
13 was my technically last day.

14 Q. Will you mark this? This will be 181, I  
15 believe. Exhibit Abbott 181.

16 MS. MILLER: Mary Miller on behalf of the  
17 Florida Attorney General's office. Florida reserves  
18 the right to strike all testimony relating to  
19 documents used as exhibits here today with respect to  
20 the Mylan case and cross-noticed case, due to failure  
21 to produce said documents based on properly served  
22 request for production of documents.

1 try and reform AWP in the late '90s. And a couple of  
2 the larger hospital chains obviously also benefited  
3 from the spread on outpatient drugs. And they  
4 instructed me that it was their interest to not have  
5 any reforms happen. So I was a pretty active  
6 participant in trying to postpone or delay or kill  
7 any reforms of the Clinton Administration. And  
8 Nancy-Ann Mindeparro was my predecessor, somebody I  
9 knew quite well, spent a lot of time with Congress in  
10 there trying to either modify or reduce the reforms  
11 that Secretary Shalala and Nancy and others had in  
12 mind.

13 And one of the reasons that I became such  
14 a rabid advocate for fixing the government was  
15 because when I was representing those hospitals, I  
16 realized how totally outrageous the policy was. So  
17 my history at the Federation probably resulted in me  
18 putting on my top one or two or three list of things  
19 to fix when I became the HCFA CMS administrator.

20 Q. And do you recall that what the Clinton  
21 Administration proposed in approximately 1997 was  
22 that Medicare move to actual acquisition cost for the

1 reimbursement of Medicare Part B drugs?

2 A. Generally, that's -- I remember that.

3 Q. And you worked, you worked against that  
4 proposal as part of your duties on behalf of the FH  
5 -- FAH, correct?

6 A. Yes.

7 Q. And can you just sort of explain what you  
8 mentioned in terms of how it is that hospitals  
9 benefit in part from the spread between AWP and  
10 actual acquisition costs?

11 A. Probably from the beginning, the biggest  
12 issue just because of the volume of the dollars was  
13 always Procrit appropriate, and then later Aranesp,  
14 and the fact that how, you know, how outpatient  
15 departments usually back then for oncology would  
16 acquire drugs for, let's say, a two-week dose back  
17 then I think was 5 or 600 dollars, they could  
18 actually buy it. Medicare was reimbursing 95 percent  
19 of average wholesale price, which was frequently 1500  
20 dollars or more. And the hospitals obviously had  
21 come to rely on that spread just like physicians did.  
22 And hospitals, you know, to them, revenue